

IN THE SUPREME COURT OF THE STATE OF DELAWARE

LISA MILLER, <sup>1</sup>	§	
	§	No. 222, 2011
Respondent Below,	§	
Appellant,	§	Court Below—Family Court of
	§	the State of Delaware in and for
v.	§	New Castle County
	§	
DIVISION OF FAMILY	§	
SERVICES,	§	
	§	
Petitioner Below,	§	
Appellee,	§	
	§	File Nos. CN07-02134
and	§	10-07-07TN
	§	
GUARDIAN AD LITEM,	§	Pet. Nos. 09-19541
	§	10-23054
Appellee.	§	

Submitted: September 21, 2011

Decided: November 23, 2011

Before **STEELE**, Chief Justice, **HOLLAND** and **RIDGELY**, Justices.

**O R D E R**

This 23<sup>rd</sup> day of November 2011, it appears to the Court that:

(1) In October 2007, following the arrest of the appellant, Lisa Miller (“Miller”), the Division of Family Services (“DFS”) was granted emergency custody of two of Miller’s biological children born in 2004 and

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<sup>1</sup> By Order dated May 4, 2011, the Court assigned a pseudonym to the appellant. Del. Supr. Ct. R. 7(d).

2006 (hereinafter “the Children”). The Children were placed in foster care, a case plan for reunification was established, and the mandated dependency/neglect hearings ensued.

(2) In November 2009, DFS filed a petition (“TPR”) seeking termination of Miller’s parental rights in the Children. The Family Court held a TPR hearing in March 2010. By order dated April 28, 2010, the Family Court terminated Miller’s parental rights in the Children on the statutory ground that she had failed to plan for their needs and that termination was in the Children’s best interest.<sup>2</sup>

(3) In June 2009, DFS was granted emergency custody of a third biological child of Miller’s born in 2008 (“the Child”). The Child was placed in the same foster home as the Children. Again, the mandated dependency/neglect hearings ensued, and a case plan for reunification was established. The record reflects that at each of the hearings, the Family Court continued custody of the Child with DFS on the basis that the Child was dependent.<sup>3</sup>

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<sup>2</sup> By Order dated January 10, 2011, we affirmed the Family Court’s judgment in that case. *Miller v. Dep’t of Serv. For Children, Youth and Their Families*, 2011 WL 67782 (Del. Supr.).

<sup>3</sup> The record reflects that hearings were held on June 24, 2009, July 21, 2009, August 17, 2009, October 27, 2009, February 16, 2010 and June 11, 2010.

(4) In July 2010, DFS filed a TPR petition seeking termination of Miller's parental rights in the Child. The Family Court held a TPR hearing on January 20, 2011. By decision dated April 5, 2011, the Family Court granted the petition and terminated Miller's parental rights in the Child. This appeal followed.

(5) On appeal, Miller's counsel ("Counsel") has filed an opening brief and a motion to withdraw pursuant to Supreme Court Rule 26.1<sup>4</sup> Counsel submits that she is unable to present a meritorious argument in support of the appeal. Miller has submitted no points for the Court's consideration. DFS and a court-appointed attorney guardian *ad litem* have each moved to affirm the Family Court's judgment.

(6) In Delaware, terminating parental rights requires a two-step analysis.<sup>5</sup> First, the Family Court must identify a statutory basis for termination.<sup>6</sup> Second, the Family Court must determine what is in the best interest of the child.<sup>7</sup> It is incumbent on the petitioner, in this case DFS, to

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<sup>4</sup> See Del. Supr. Ct. R. 26.1 (providing for continuing obligation of appellant's trial counsel in appeal from termination of parental rights).

<sup>5</sup> *Shepherd v. Clemens*, 752 A.2d 533, 536-37 (Del. 2000).

<sup>6</sup> *Id.* at 537. See Del. Code Ann. tit. 13, § 1103(a) (2009) (listing grounds for termination of parental rights).

<sup>7</sup> *Shepherd v. Clemens*, 752 A.2d at 537. See Del. Code Ann. tit. 13, § 722(a) (listing best interest factors).

prove, by clear and convincing evidence, that there is a statutory basis for termination and that the best interest analysis favors termination.<sup>8</sup>

(7) This Court's review of a Family Court order terminating parental rights involves consideration of the facts and the law.<sup>9</sup> To the extent the issues implicate rulings of law, our review is *de novo*.<sup>10</sup> To the extent the issues implicate rulings of fact, we conduct a limited review of the factual findings to assure that they are sufficiently supported by the record and are not clearly wrong.<sup>11</sup> The Court will not disturb inferences and deductions that are supported by the record and that are the product of an orderly and logical deductive process.<sup>12</sup> If the Family Court has correctly applied the law, our review is limited to abuse of discretion.<sup>13</sup>

(8) In this case, Miller, through counsel, conceded at the outset of the January 20, 2011 TPR hearing that the April 28, 2010 involuntary termination of her parental rights in the Children established a statutory ground for terminating her parental rights in the Child.<sup>14</sup> Accordingly,

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<sup>8</sup> *Powell v. Dep't of Serv. for Children, Youth & Their Families*, 963 A.2d 724, 731 (Del. 2008) (citing *In re Stevens*, 652 A.2d 18, 23 (Del. 1995)).

<sup>9</sup> *Wilson v. Div. of Family Serv.*, 988 A.2d 435, 439 (Del. 2010).

<sup>10</sup> *Id.* at 440.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> See Del. Code Ann. tit. 13, § 1103(a)(6) (providing that parental rights may be terminated if "[t]he respondent's parental rights over a sibling of the child who is the subject of the petition have been involuntarily terminated in a prior proceeding").

Miller agreed that there was no need for DFS to present evidence of a statutory ground for termination, and that the case would be decided based on whether the termination of her parental rights was in the best interests of the Child.<sup>15</sup>

(9) Having carefully reviewed the parties' positions and the record, the Court concludes that there is clear and convincing evidence supporting the Family Court's decision that it was in the Child's best interests to terminate Miller's parental rights. The record reflects that the Family Court thoroughly considered the best interest factors and was guided by the factual findings it made as to each. The Family Court summarized its findings in its April 5, 2011 decision as follows:

Considering all of these factors as a whole, the Court finds [Miller's] inability to carry out her rights and responsibilities as a parent, her criminal record, and her inconsistent visitation and individual counseling sessions, overwhelming favor termination of her parental rights. . . . The Court finds the evidence is clear and convincing that it is in the Child's best interest to terminate [Miller's] parental rights.

(10) The Court has discerned no abuse of discretion in the Family Court's factual findings and no error in the court's application of the law to the facts. The Family Court's judgment shall be affirmed.

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<sup>15</sup> Hr'g Tr. at 6-7 (Jan. 20, 2011).

NOW, THEREFORE, IT IS ORDERED that the judgment of the Family Court is AFFIRMED. The motion to withdraw is moot.

BY THE COURT:

/s/ Myron T. Steele  
Chief Justice